No. 81-50

Supreme Court, U.S.
FILED
AUG 6 1981
ALEXANDER L. STEVAS, CLERK

In The

Supreme Court of the United States

October Term, 1981

PRUDENCE J. CAMARDO; ARTHUR FALZONE, HENRY J. PAPE, IVAN WAHLS, LILLIAN WAHLS, and all persons similarly situated, BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT No. 4, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 10, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 8, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 6; All of the TOWN OF GREECE, and DANIEL A. STETZEL, SR.,

Appellants,

vs.

CITY OF ROCHESTER, N.Y., BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, BOARD OF EDUCATION

(Over)

On Appeal From The Court Of Appeals Of The State Of New York

MOTION TO DISMISS OR AFFIRM

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Appellees.

Action No. 1

ELLEN ANDERSON and CHARLES and GERTRUDE LA VALLE, and all persons similarly situated, BERNADETTE UEBLACKER and JAMES and PATRICIA BRITT, and all persons similarly situated,

Appellants,

vs.

THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE CITY OF THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, and THE STATE OF NEW YORK,

Appellees.

Action No. 2

Questions Presented

I. Whether, contrary to the time-honored presumptions against the creation of contract rights by statute, against the yielding of the sovereign right of taxation by contract, against the creation by statute of a tax exemption in perpetuity, against the yielding of the police power to fix the boundaries of political subdivisions, against the contracting away of the police power to determine and redetermine education policy and mechanisms for municipal financing of public education, the appellants, municipalities and citizens thereof, may claim a contract-based entitlement to free education for their children —in perpetuity— solely on the basis of 1915-1922 legislation which, while effecting a redistricting of municipal boundaries, also extended at that time a privilege of free education to children of the appellant school districts.

II. Whether, assuming *arguendo*, any contract rights emanated from the 1915-1922 legislation, subsequent legislation enacted a half century later, following urbanization and dramatic demographic changes in the affected areas, could be held materially to impair an obligation of contract when the subsequent legislation, in the context of redistricting municipal school district boundaries, merely restored to the appellant citizens the normal burden of paying for the education of their children through real property taxation, while simultaneously conferring on the taxpayers a five-year phased tax exemption and on the affected school districts a gift of $2,500,000 to ease the transition.

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MOTION TO DISMISS OR AFFIRM

Opinions Below

The opinion of the Appellate Division of the Supreme Court of New York for the Fourth Judicial Department is printed in appellants' Appendix to the Jurisdictional Statement at A-2—A-4. It is reported at 79 AD2d 864, 434 NYS 2d 514 (1980).

The order of the New York Court of Appeals dismissing appellants' appeal is printed in appellants' Appendix to the Jurisdictional Statement at A-1. It is reported at 53 NY2d 795 (1981).

Relief Requested

This Court should dismiss the appeal on the ground that it does not present a substantial federal question. Alternatively, this Court should affirm for the reasons expressed by the courts below.

Facts

As part of its police power prerogative of determining the boundaries of its municipal subdivisions, the State of New York in the early part of this century enacted legislation to annex portions of the towns of Greece and Gates to the City of Rochester, all situate in Monroe County, New York (NY L 1915, ch 359; NY L 1918, ch 547; NY L 1922, ch 519). Those statutes offered a gratuity to the annexed districts in the form of tuition-free education at the expense of the City of Rochester for the children of citizens then residing in the annexed school districts.

In 1975, the New York Legislature again exercised its police power to redistrict its political subdivisions, by severing from the City of Rochester the school districts previously annexed, and by creating the Greece Central School District. A portion of the previously annexed district was severed from Rochester and merged with the Gates-Chili School District (NY L 1975, chs 129, 746).

As part of the 1975 legislation, the New York Legislature relieved the City of Rochester of any further obligation to provide tuition-free schooling for those children residing in the school districts previously annexed, but now independent of Rochester.

Appellants, residents of the formerly annexed school districts, and the aggrieved school districts, thereafter brought suit demanding—in perpetuity—free education for their children at the expense of the City of Rochester, *which derived no real property tax revenues whatsoever from appellants.**

Appellants claimed that the 1975 legislation impaired a contractual obligation which purportedly arose from the 1915-1922 legislation altering the affected school districts.

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* A further gratuity from the State in the form of a $2,500,000 gift to the appellant school districts was provided by the 1975 legislation, which also afforded residents thereof a five-year phased tax exemption (see A-3).

The trial court rendered a decision, after trial, declaring that plaintiffs (appellants herein) had not met their burden of proving breach of any contractual obligation (Record on Appeal before Appellate Division of New York Supreme Court, at 329-330).

Plaintiffs' unsuccessful appeals ensued, culminating in the appeal now pending in this Court.

Summary of Argument

The standard presumptions against creation of contract rights from statutes, against creation of perpetual tax exemptions, and against alienation of the basic police power attributes of a sovereign, all counsel strongly against finding any contract rights in favor of appellants.

Moreover, even if contract rights could be said to exist, the 1975 legislation, with its restoration of independence to certain school districts and various cost consideration to appellants, constituted a reasonable modification of the contract in light of the radical change in demographic conditions and the economy over a half century, which rendered conditions far different from any expectations of the parties at the time of the "contract".

ARGUMENT

Appellants' sole argument is that State legislation enacted as part of the reserved police powers, over subjects (education and municipal boundaries) that are traditionally regarded as at the very core of state interests, conferred contract-based rights that no subsequent Legislature could ever modify, regardless of changed circumstances. Appellants' assertion flies in the face of an impressive array of this Court's decisions.

A.

There is an overwhelming presumption that statures are not intended to create private contractual rights, but, instead, merely declare a policy to be pursued until the Legislature shall ordain otherwise *(Dodge v. Board of Education,* 302 US 74, 79 [1937]). "The principal function of a legislative body is not to make contracts but to make laws which declare the policy of the state and are subject to repeal when a subsequent legislature shall determine to alter that policy." *(Indiana* ex rel. *Anderson v. Brand,* 303 US 95, 100 [1938], reh. den., 303 US 667 [1938].)

A statute is treated as a contract only when the language and circumstances evince a manifest legislative intent to create private contractual rights enforceable against the State *(United States Trust Co. of New York v. New Jersey,* 431 US 1, 17 n 14 [1977], reh. den., 431 US 975 [1977]; *Dodge v. Board of Education,* 302 US at 78-79, *supra; Indiana* ex rel. *Anderson v. Brand,* 303 US at 104-105, *supra).*

Determination of the existence *vel non* of a contract is presumptively a question of state law *(Indiana* ex rel. *Anderson v. Brand, supra,* p. 100) as to which this Court consistently leans toward agreement with the state court determination, with a departure therefrom warranted only if the state court decision is manifestly wrong *(New York* ex rel. *Clyde v. Gilchrist,* 262 US 94, 97 [1923]; *Chicago Theological Seminary v. Illinois,* 188 US 662, 675 [1903]). Especially is the Court slow to depart from the judgment of the state courts denying a tax exemption allegedly founded on a contract *(New York* ex rel. *Clyde v. Gilchrist, supra,* p. 97 [HOLMES, J.]; cf. *New York Rapid Transit Corp. v. City of New York,* 303 US 573, 593 [1938]; reh. den., 304 US 588 [1938]).

In the case at bar, no contract emanated from legislation that merely implemented traditional police power functions of government, viz., declaring education policy and fixing municipal boundaries.*

B.

It is "a commonplace that the Contract Clause does not operate to obliterate the police power of the States," *(Allied Structural Steel Co. v. Spannous,* 438 US 234, 241 [1978]; *Manigualt v. Springs,* 199 US 473, 480 [1905].) All contracts implicitly include the reservation by the state of sovereign power to protect the vital interest of the people *(East N.Y. Sav. Bank v. Hahn,* 326 US 230, 232, 234-235 [1945]; *Wright v. Union Central Life Ins. Co.,* 304 US 502, 516 [1938], reh. den., 305 US 668 [1939]), as the state may not divest itself by contract of its police power *(Home Bldg. & Loan Assn. v. Blaisdell,* 290 US 398, 434 [1934]). The implementation of that police power does not constitute an impairment of the obligation of contracts if the power is exercised for a public end by means reasonably adapted to that end *(Faitoute Iron & Steel Co. v. City of Asbury, N.J.,* 316 US 502, 515 [1941]; *Home Bldg. & Loan Assn. v. Blaisdell,* 290 US at 438, *supra).*

Here, after fifty years of industrialization and urbanization, the burden of providing to suburban school districts free education at the expense of the City of Rochester — which derives no real property tax revenues whatsoever from the adjacent suburbs — became so inequitable as to warrant legislative action. "The intervention of the State in the fiscal affairs of its cities is plainly an exercise of its essential reserve power to protect the vital interests of its people ***" *(Faitoute Iron & Steel Co. v. City of Asbury, N.J.,* 316 US at 512, *supra).*

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* Failure of consideration also defeats Contract Clause claims *(West Wis. Ry. v. Supervisors,* 93 US 595, 597-598 [1876]), and most especially claims of tax immunity (B. Wright, The Contract Clause of the Constitution 180 [1938]). "Gratuitous grants are subject to repeal at the will of the grantor." *(Loc. cit.)* Here, there was no consideration because the creation and redistricting of municipalities, being political acts, do not come with the ambit of a contract *(Gomillion v. Lightfoot,* 364 US 339, 343 [1960]).

Economic interests of the state may justify exercise of its dominent protective power notwithstanding interference with contracts *(Home Bldg. & Loan Assn. v. Blaisdell,* 290 US at 444-446, *supra;* see also, *Viex v. Sixth Ward Bldg. & Loan Assn. of Newark,* 310 US 32, 40 [1940]).

In contrast to contracts between private individuals affecting matters and things in which the public has no concern, contracts with persons or corporations whose rights and powers were created for public purposes by legislat.ve acts, are not insulated by the Contract Clause from legislative abrogation. "Contracts of the latter decription are held to be within the supervising power and control of the legislature when exercised to protect the public safety, health and morals***" *(Chicago, Burlington & Quincy Railroad Co. v. Nebraska* ex rel. *Omaha,* 170 US 57, 72 [1898], quoted with approval in *Faitoute Iron & Steel Co. v. City of Asbury Park, N.J.,* 316 US at 514-515 n 2, *supra).*

Here, the re-alignment of school districts is surely within the traditional sphere of the police power.

Moreover, no alleged contract exemption from taxation is valid unless it is clear and unambiguous *(New York Kapid Transit Corp. v. City of New York,* 303 US 573, 594, *supra; People* ex rel. *Central Union Trust Co. of New York v. Wendell,* 197 App Div 131, 188 NYS 344, affd., 231 NY 629, 132 NE 916 [1921]). All contracts claimed to provide for tax exemption must receive a strict construction *(Pacific Co. v. Johnson,* 285 US 480, 491 [1938]; *Adams Mfg. Co. v. Storen,* 304 US 307, 315-316 [1938]), and all doubts and ambiguities must be resolved in favor of the taxing power and against the existence of the exemption *(Hale v. Iowa State Board of Assessment and Review,* 302 US 95, 103 [1937]; *People* ex rel. *Central Union Trust Co. of New York v. Wendell, supra).* All contracts are subject to the power of the state to change its tax laws *(Barwise v. Sheppard,* 299 US 33, [1936], reh. den., 299 US 622 [1936]).

> "To all claims of contract exemption from taxation must be applied the well-settled rule that, as the power to tax is

> an exercise of the sovereign authority of the state, essential to its existence, the fact of its surrender in favor of a corporation or an individual must be shown in language which cannot be otherwise reasonably construed, and all doubts which arise as to the intent to make such a contract are to be resolved in favor of the state." *(Seton Hall College v. Village of South Orange,* 242 US 100, 106 [1916].)

Even assuming —*arguendo,* given the overwhelming contrary presumption (*ante,* pp. 4-5)— that a contract was contemplated by the 1915-1922 legislation, reasonable modification of the contract does not violate the Contract Clause *(United States Trust Co. of New York v. New Jersey,* 431 US at 21, *supra; Ogden v. Saunders,* 12 Wheat. 213, 286 [1827]; accord, Hale, *The Supreme Court and the Contract Clause,* 57 Harv L Rev 852, 879-880 [1944]). "This Court's decisions have never given a law which imposed unforeseen advantages or burdens on a contracting party constitutional immunity against change." *(City of El Paso v. Simmons,* 379 US 497, 515 [1965], reh. den., 380 US 926 [1965].)

The constitutional prohibition against impairment of contracts is not an absolute one and is not to be read with literal exactness like a mathematical formula *(City of El Paso v. Simmons, supra,* p 508; *Home Bldg. & Loan Assn. v. Blaisdell, supra,* p 428). Thus, a finding of a technical impairment of contract is but a preliminary step, because any such violation must be counterbalanced against the "essential attributes of sovereign power" necessarily reserved by the states to safeguard the welfare of their citizens *(Home Bldg. & Loan Assn. v. Blaisdell, supra,* p 435; *United States Trust Co. of New York v. New Jersey, supra,* p 21). In this domain of reserved power of a State, this Court has traditionally respected the "wide discretion on the part of the legislature in determining what is and what is not necessary***" *(City of El Paso v. Simmons,* 379 US at 508-509, *supra,* quoting *East N.Y. Sav. Bank v. Hahn,* 326 US at 232-233, *supra).*

Tax exemptions, as with any other statutory grants, are subject to modification by later legislatures *(State of New York* ex rel. *Troy Union R.R. v. Mealy,* 254 US 47, 50 [1920]; *Wisconsin & Michigan Ry. v. Powers,* 191 US 379, 387 [1903]). Here, the 1975 legislation was more than reasonable. The taxpayers of the affected districts who —for the first time in half a century— were to pay for their own schools, were accorded a five year tax exemption (100% the first year, 80% the second year, etc.), with the municipalities relieved of any burden by a gift of $2,500,000 from the State Legislature (Plaintiffs' Complaint, ¶¶ 11-12, Record on Appeal to Appellate Division of State Supreme Court, at 25a-27a; see also, NY L 1975, ch 129).

Judged against all these pillars of Contract Clause jurisprudence, no contract was created by the 1915-1922 legislation, and, *arguendo,* if a contract existed, the 1975 legislation constituted a reasonable modification thereof.

CONCLUSION

FOR THE REASONS STATED, THIS COURT SHOULD DISMISS OR AFFIRM.

Dated Albany, New York
August 5, 1981

Respectfully submitted,

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